Some REASONS

For Paſſing the Bill, for the better Determining of Cauſes on Bills of Review, Humbly offer'd to the Conſideration of the KING, Lords, *and* Commons *in Parliament Aſſembled.*

IT is ſaid by *Lambert Archeion* fo.69. that though poſitive and written Laws, are generally good and juſt; yet in regard no poſitive Law, that can be made, can be ſuch a perfect Rule as that thereby Juſtice may be truly ſquared out in all Caſes that may happen: therefore Equity is added for help in ſome ſpecial Caſes. But (as he ſaith further) if the Judge of Equity ſhould take Juriſdiction over all, and arrogate Authority in every Complaint brought before him, it might then come to paſs that a Beaſt ſhould bear Rule; for ſo *Ariſtotle* calls a Man whoſe judgment is not reſtrain'd by the Chain of the Law, for he will be carry'd away with unruly Affections.

That there might be an exact Adminiſtration of Juſtice to the Subjects of this Realm, by keeping both Law and Equity within their Bounds, the Judges of Equity and the Judges of Law had formerly a good Underſtanding and Correſpondence with each other, and the Judges of Equity conſulted with the Judges of Law, and were adviſ'd and directed by them how to judge in Equity: And the Reaſon is apparent; for though the Judges of the Common-Law in the Courts of Common-Law, are by their Oaths obliged to judge according to the ſtrict Rules of Law, to prevent Arbitrarineſs there: Yet when they are in Courts of Equity, and at Liberty to judge accordingly; they are the beſt Judges of Equity, and were always ſo accounted, as appears by what follows.

When the King judged of Equity in his own Perſon, it was Enacted, 28 *E.* 1. *cap.* 5. that the Chancellor and Juſtices of the Kings-Bench ſhould follow the King, and according to *Lambert Archeion* fo. 58. that was, to the intent that the Juſtices ſhould inform him of the Law, and the Chancellor of Equity: That by a due conſideration of both, a fit Moderation and Supplement of the Common-Law might appear, and be made uſe of when occaſion required.

In the latter part of the Statute 4 *H.* 4. *cap.* 9. are theſe words, *viz.* In this Caſe, and in other Caſes, the Chancellor ſhall have Power, by Authority of Parliament, calling to him ſuch Juſtices as ſhould pleaſe him, or the chief Baron of the Exchequer, if need were, to provide Remedy from time to time by their Diſcretion. By which Statute he was not to do any thing alone, and of his own head, without the Concurrence of ſome of the Juſtices, though he was truſted with the choice of them, who they ſhould be, he ſhould call to his Aſſiſtance.

By a Petition of the Commons in Parliament 3 *H.* 5. *nu.* 46. it is complained of, that the Judges of the Common-Law being forc'd to attend in Chancery for the Examination of Matters there, and the Chancery then intermedling with Matters determinable at the Common-Law, it gave ſo much the more occaſion to keep the Judges out of their own Courts, and therefore it was pray'd, that every Man that ſued in Chancery for a Matter determinable at the Common Law, ſhould forfeit 40 *l.* to the Party grieved; which ſhews the Judges of the Common-Law were then a part of the Judicature of that Court.

When the Parliament formerly referr'd any thing to the Chancellor to be determin'd, 'as ſometimes they did, he was not to do it but by Advice of ſome of the Juſtices, as appears 3 *H.*5. *Rot. Parl. nu.* 49. So that it is very apparent, that the Judges of the Common-Law, (then call'd Juſtices) or ſome of them, were originally join'd with the Chancellor, in the Exerciſe of his Juriſdiction, and that it was never intended by the Conſtitution of the Government, that he alone ſhould exerciſe an abſolute and arbitrary Power over the Common-Law by colour of Equity, and this the common Form of the Decrees of the Chancery ſeems to imply, which runs thus: It is Ordered and Decreed by the Lord Chancellor, *&c.* and by the Court of Chancery, that, *&c.* which words, and by the Court of Chancery, imply, there were ſome others to make up the Judicature there, beſides the Chancellor or Keeper himſelf, and beſides the Maſters in Chancery, who though they ſit there, never have any Vote in making a Decree.

It ſeems that after the Judges of the Common Law, deſiſted from giving a conſtant Attendance in *Chancery*, they uſed to meet the Chancellor upon ſpecial occaſions in the Exchequer Chamber to Re-hear Cauſes, heard by himſelf, as appears by the Year-Books following, *viz.* 37 *H.*6. *fol.* 13. *Ibid. fol.* 35. 36. 7 *E.* 4 *fol.* 15. 22 *E.* 4. *fol.* 67. 27 *H.* 8. *fol.* 14.

And ſometimes, inſtead of their ſitting with the Chancellor in *Chancery*, to hear Cauſes Orlginally, or meeting him to re-hear Cauſes, the King or Queen for the time being, us'd upon Petition to them, to refer the Reviewing, or Examination of the Error or Injuſtice complain'd of in any Decree to the Judges, as appears by *Roll's* 1ſt. Report, *fol.* 331, in the Caſe of Vawdry and Pannel, where it is ſaid to be affirm'd by the Lord Chief Juſtice *Cook*, that in the 42 Year of Queen *Eliz.* the then Lord Keeper, agreed it to be Law, That if he Err'd in his Decree, the Queen might refer it to the Judges to Rectifie, and accordingly there were many ſuch References in her Reign, and in the Reign of King *James*, and King *Charles* the 1ſt. ſome to the Chancellor and ſome of the Judges, and ſome to the Judges without the Chancellor, according to whoſe Opinion the Chancellor affirmd, and revers'd his Decree.

In *Roll's* 2d. Reports, *fol.* 431. It is affirm'd, That the Chancellor formerly ſent to the Judges of the Common Law, to know when Equity ſhould be admitted againſt the Common Law.

In

In the Exile of King *Charles* the Second, becauſe here was then no King that might make the like References to the Judges, upon Complaint againſt Chancery Decrees, the then Powers, *Anno* 1654, to ſupply that Defect, did ordain amongſt other things, That Decrees in Chancery ſhould be Examined and Rectified, by Re-hearing the Cauſe by two Judges, out of each of the Three Common-Law-Courts at *Weſtminſter*, though there were then three Commiſſioners for the Cuſtody of the Great Seal, as now there are: which Ordinance fell to the Ground upon King *Charles* the Second's Reſtoration, not but that the thing was good in it ſelf, but for that it was made by an unlawful Power; and *I* preſume, the Reaſon it was not confirm'd upon King *Charles*'s Reſtoration, was, becauſe it might be reaſonably expected, that that King would have granted the like References, upon Complaint of Error or *Injuſtice* in a Chancery Decree in the *Intervals* of Parliament, as his Predeceſſors had done; but it could not be obtain'd, and being ſo long diſus'd, it is not like to be had hereafter.

It is very apparent, that untill after the Reſtoration of King *Charles* the Second, there was no known time in *England*, but there was ſome Relief to be had againſt the Errors of the Chancery in the *Intervals* of Parliament, and that the Decrees of the Court of Chancery were no more concluſive without the concurrence of others, than the Judgments of other Courts; againſt which, there is a Relief provided in the *Intervals* of Parliament, either by Writ of Error, or by Delegates, and there appears no more *Infallibility* in the Judges of the Chancery, than in other Judges, and rightly to determine where Equity ought to take place againſt the Common-Law, is the greateſt difficulty of all, therefore it is conceived this Bill ought to paſs into a Law.

It hath been objected by ſome, That the determining of Reviews, as is propoſed by the Bill, will be a hinderance to the Juriſdiction of the Lords in Parliament, in point of Appeals, but if the matter be well conſider'd, it cannot be thought ſo upon any good Reaſon; for it is not long ſince, that the Lords would receive any Appeals at all, before there had been a Review, and if having Reviews, was no hindrance to Appeals, as Reviews were then had, the having of them after a better manner than formerly, can be nothing the more a hindrance.

It is more convenient, that Reviews ſhould be determin'd by others, than by thoſe that made the firſt Decree, or that thoſe that made the firſt Decree ſhould have any Hand, or Vote in determining the Review, becauſe it is not only natural for Men to be fond of their own Opinion, or Judgment once given, but moſt Men think it a diſparagement to them, to have their Judgments queſtion'd, ſo that there can nothing be expected from thoſe that made the firſt Decree, but their endeavours to confirm it, and it is a Rule ſtrictly obſerved in the examination of the Errors of other Courts, that they that gave the firſt Judgment have no hand in examining the Errors thereof, except in Parliament, where the Errors of one Parliament, or Seſſion, are corrected by another, but that is of Neceſſity, becauſe there can be no higher Court, and that Error ſhould never have hopes to be for ever prevalent; therefore it may be ſufficient, that thoſe that made the firſt Decree, may be preſent, if they pleaſe, at the Review, to ſhew the Reaſons why they made ſuch a Decree, but not to have any Vote in the Judgment upon the Review.

A Review is a Remedy in the Intervals of Parliament, which every Man hath a right to have, and it ſeems there are no fitter Perſons to determine ſuch Reviews upon Decrees in Equity, then the Judges of the Common Law, becauſe they are, and always ought to be Men of the greateſt *Integrity* and Learning in the Law; and becauſe it is a ſort of Legal Equity, an Equity limited, and qualified by the Law, and not every thing that ſeems Equity to every Man's meer natural Reaſon that is to be allowed, but for this, the Judges will have no great reaſon to be thankfull, for they are to get nothing by it, but their Labour for their Pains.

The Determining of Reviews as is propoſed by the Bill will occaſion no further delay nor any increaſe of Charge more than is now: Nay, it may ſhorten the Delay, and leſſen the Expence conſiderably, by Enacting that at the ſame time that the Error is Examin'd, ſuch further Decree ſhall be made as ſhall be thought fit. Whereas now the Error is Examin'd one day, and the Conſideration of what further Decree is to be made, is put off to another day, which occaſions double Attendance, and double Expences, more than is neceſſary; and beſides, as things are now managed, there's not ſo much as an offer admitted to be made for any Relief againſt the Injuſtice of a Decree by Bill of Review, which is provid againſt by this Bill.

To conclude, The humble Propoſer of theſe Reaſons hath been a Student and Practicer in the Courts of Common Law, and Equity, for above 25 years, and from the obſervations he hath made, both from his Reading, and Practice, he doth ſincerely, and from his Conſcience declare, That the Courſe propos'd by the Bill, is the eaſieſt, and ſpeedieſt, the cheapeſt, and the ſureſt way, for the People of *England* to have that Equity that is fit to be had, and withal, to preſerve their Laws, Liberties, and properties, from being over-run, under the Colour of Equity, by Arbitrary Power, the Enemy of Humane Society; and to preſerve them from being deprived of the Knowledge of what is *Law*, of which to be deprived (of all others) is the greateſt Bondage that any People can be ſubject too.

Miſera eſt Servitus ubi jus eſt vagum aut Incognitum Cook 4. Juſt. 246. & 332.

Reaſons
for [illegible] of Bill
for [illegible] Lord Keeper
of Bonds in Court of
Equity